

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WILLIAM GENE EATON,)
vs.)
Plaintiff,)
vs.)
OKLAHOMA COUNTY SHERIFF'S)
DEPARTMENT, et al.,)
Defendants.)
Case No. CIV-06-566-M

REPORT AND RECOMMENDATION

This matter is before the Court to determine the status of this action following the Order and Judgment entered by the Tenth Circuit Court of Appeals on May 27, 2008.

By way of background, Plaintiff, a federal prisoner appearing pro se, filed this action pursuant to 42 U.S.C. § 1983 alleging various violations of his constitutional rights as well as bringing certain supplemental state tort claims. The undersigned entered a Report and Recommendation on July 18, 2007, recommending that summary judgment be granted in favor of the Defendant Sheriff John Whetsel and against the Plaintiff on all Plaintiff's claims brought against the Sheriff. In that Report and Recommendation, the undersigned noted that Plaintiff's claims against the Defendant Cindy L. Ragsdale were not ripe for decision and therefore had not been addressed. The reason the undersigned determined that the claims against the Defendant Ragsdale were not ripe for decision was that she had not entered an appearance in the case and the court file did not reflect any service of process upon her. Therefore, the undersigned entered an Order on July 25, 2007, directing the Plaintiff to show

cause why his claims against the Defendant Ragsdale should not be dismissed due to his failure to timely serve her. Plaintiff responded to the show cause order on August 9, 2007.

In the meantime, Judge Miles-LaGrange adopted the undersigned's Report and Recommendation and granted summary judgment in favor of the Defendant Sheriff Whetsel and against the Plaintiff and she entered a judgment in the Sheriff's favor on September 13, 2007. Plaintiff then initiated an appeal of that decision to the Tenth Circuit Court of Appeals.

The circuit court was obviously concerned that Plaintiff's appeal was premature, so it entered an order on November 1, 2007, noting that the order and judgment Plaintiff was attempting to appeal from did not appear to be a final or immediately appealable decision as Plaintiff's claims against Defendant Cindy Ragsdale remained unresolved. Therefore, the Court ordered the parties to take certain action to obtain a final judgment or the appeal would be dismissed.

However, by an order dated November 23, 2007, the circuit court noted that Defendant Ms. Ragsdale and Ragsdale Towing Service were not parties in the district court as they had never been served, so the Court vacated its November 1, 2007 order and proceeded with Plaintiff's appeal. On May 27, 2008, the circuit court entered its Order and Judgment, affirming this Court's grant of summary judgment to Sheriff Whetsel. Further, the Court again noted that Cindy Ragsdale was not a party as she was never properly served. See Order and Judgment, p. 2, n. 1. The circuit court also denied Plaintiff's two motions in

which he asked the Court to reconsider its order in which it observed that the Defendant Ragsdale had not been served, but the Court denied Plaintiff's request. Id. at p. 6.

Accordingly, in addressing Plaintiff's appeal of this Court's order granting summary judgment in favor of Sheriff Whetsel, the Tenth Circuit Court of Appeals only addressed the appeal because the Court determined that the Defendant Ragsdale was not properly served and therefore was not a party to the case. Since she is not a party to this case and since this Court has disposed of all claims against Sheriff Whetsel, there is nothing remaining for this Court to do. It is therefore recommended that the Court Clerk be directed to close this case based upon the Tenth Circuit Court of Appeals' Order and Judgment dated May 27, 2008. The parties are advised of their right to object to this Report and Recommendation by August 7, 2008. This Report and Recommendation disposes of all the issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 18th day of July, 2008.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE